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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,231	06/20/2003	Andrew E. McPherson	77004	9158

48940 7590 03/08/2007

FITCH EVEN TABIN & FLANNERY
120 S. LASALLE STREET
SUITE 1600
CHICAGO, IL 60603-3406

EXAMINER	
WONG, LESLIE A	
ART UNIT	PAPER NUMBER
1761	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/08/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/601,231	MCPHERSON ET AL.	
	Examiner	Art Unit	
	Leslie Wong	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *23 March 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-54* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-54* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howard et al (U.S. Pat. No. 5,332,587) in view of Denhartog et al (U.S. Pat. No. 5,747,091) for the reasons set forth in rejecting the claims in the last office action. The amendments to the claims are not seen to influence the conclusion of unpatentability previously set forth.

With regard to claims 1-3, 9-11 and 17-19, Howard et al disclose acid stabilized pasta having a pH below about 4.6 (abstract, col 4 lines 6-7). However, Howard et al failed to disclose adding a high-intensity sweetener. Denhartog et al teach sweetened extruded products such as potato sticks (col 3 line 9) using high intensity sweeteners such as sucralose at a range of 0.01 to 0.2% (col 3 lines 56-57) in order to provide sugar-free foods for consumers. Denhartog et al also teach that the content of the sweetener may vary depending upon the desired level of sweetness.

It would have been obvious to one of ordinary skill in the art to modify Howard et al with Denhartog et al by incorporating a high intensity sweetener in the acid stabilized product not only as a sweetener to improve flavor, but also to provide sugar-free food choices for consumers.

With regard to claims 4-5, 12-13, 20-21, 30-31, 43-44 and 51-52, Howard et al disclose food acceptable acids including phosphoric acid, fumaric acid, malic acid, lactic acid, citric acid, tartaric acid, acetic acid and propionic acid (col 8 lines 30-34).

With regard to claims 6-7, 14-15, 22-23, 32-33 and 53-54, Howard et al disclose an acidified pasta product.

With regard to claims 8 and 16, Howard et al disclose a method of preparing pasta from dough made from any suitable material such as flour, corn, rice etc with water (col 4 lines 53- 58). The pasta can be any desired shape (col 4 line 66) and it is cooked in acidified water (col 5 lines 16-20). In addition Howard et al further disclose that to treat with acid (s) refers to treatment in any way suitable for effecting intimate contact between the pasta material and the acid (s), for example, by boiling pasta material in acidified water, by incorporating the acid (s) directly in the pasta material during formulation, by soaking pasta dough in acidified water etc (col 5 lines 13-20). However, Howard et al failed to disclose adding an effective amount of a high-intensity sweetener. Denhartog et al teach sweetened extruded products such as potato sticks (col 3 line 9) using high intensity sweeteners such as sucralose at a range of 0.01 to 0.2% (col 3 lines 56-57) in order to provide sugar-free foods for consumers. Denhartog et al also teach that the amount of sweetener may vary depending upon the desired level of sweetness, therefore it would not have involved an inventive step to increase or decrease the amount of sweetener to a range as recited by applicant.

It would have been obvious to one of ordinary skill in the art to modify Howard et al with Denhartog et al by incorporating a high intensity sweetener in the acid stabilized

product not only as a sweetener to improve flavor, but also to provide sugar-free food choices for consumers.

With regard to claims 24-29, Howard et al disclose an acid-stabilized pasta comprising a food-acceptable acid (abstract). In addition, Howard et al disclose that the typically the pH of the pasta is in the range of about 3.8-4.6 (col 9 lines 22-23) and that one skilled in the art would be able to balance the pH level and amount of acid used to ensure that the pasta is shelf-stable and has substantially no acid flavor notes (col 9 lines 28-32). However, Howard et al failed to disclose adding a high intensity sweetener. Denhartog et al teach sweetened extruded products such as potato sticks (col 3 line 9) using high intensity sweeteners such as sucralose at a range of 0.01 to 0.2% (col 3 lines 56-57) in order to provide sugar-free foods for consumers. Denhartog et al also teach that the amount of sweetener may vary depending upon the desired level of sweetness, therefore it would not have involved an inventive step to increase or decrease the amount of sweetener to a range as recited by applicant.

It would have been obvious to one of ordinary skill in the art to modify Howard et al with Denhartog et al by incorporating a high intensity sweetener in the acid stabilized product not only as a sweetener to improve flavor, but also to provide sugar-free food choices for consumers.

With regard to claims 34-35, Howard et al disclose a method of preparing acid-stabilized pasta by incorporating the acid in the pasta dough, or soaking, or cooking the dough in an aqueous solution containing a food acceptable acid (col 7 lines 63-67). Also, Howard et al disclose precooking the pasta for about 5-20minutes (col 8 lines 51-

68). In addition Howard et al disclose that sugar and other flavorings may be added in the cooking medium/brine (col 8 lines 41-43) but failed to disclose a high-intensity sweetener. Denhartog et al teach sweetened extruded products such as potato sticks (col 3 line 9) using high intensity sweeteners such as sucralose (col 3 lines 56-57) in order to provide sugar-free foods for consumers.

It would have been obvious to one of ordinary skill in the art to modify Howard et al with Denhartog et al by incorporating a high intensity sweetener in the acid stabilized product not only as a sweetener to improve flavor, but also to provide sugar-free food choices for consumers.

With regard to claims 36-41 and 45-46, Howard et al disclose a method of preparing acid-stabilized pasta by boiling in an aqueous solution containing a food acceptable acid at temperatures between 90°C and 100°C for about 5-20minutes (col 8 lines 51-68). In addition Howard et al disclose that sugar and other flavorings may be added in the cooking medium (col 8 lines 41-43) but failed to disclose a high-intensity sweetener. Denhartog et al teach sweetened extruded products such as potato sticks (col 3 line 9) using high intensity sweeteners such as sucralose at a range of 0.01 to 0.2% (col 3 lines 56-57) in order to provide sugar-free foods for consumers. Denhartog et al also teach that the amount of sweetener may vary depending upon the desired level of sweetness, therefore it would not have involved an inventive step to increase or decrease the amount of sweetener to a range as recited by applicant.

It would have been obvious to one of ordinary skill in the art to modify Howard et al with Denhartog et al by incorporating a high intensity sweetener in the acid stabilized

product not only as a sweetener to improve flavor, but also to provide sugar-free food choices for consumers.

With regard to claim 42, Howard et al disclose that typically the pH of the pasta is in the range of about 3.8-4.6 (col 9 lines 22-23). 12. With regard to claims 47-50, Howard et al disclose acid stabilized pasta having a pH below about 4.6 (abstract, col 4 lines 6-7). Also, Howard et al disclose the pasta pH is low enough to result in the pasta maintaining its resistance to microorganisms (col 7 lines 64-68, col 8 line 1). In addition Howard et al disclose that sugar and other flavorings may be added in the cooking medium (col 8 lines 41-43) but failed to disclose a high-intensity sweetener. Denhartog et al teach sweetened extruded products such as potato sticks (col 3 line 9) using high intensity sweeteners such as sucralose at a range of 0.01 to 0.2% (col 3 lines 56-57) in order to provide sugar-free foods for consumers. Denhartog et al also teach that the amount of sweetener may vary depending upon the desired level of sweetness, therefore it would not have involved an inventive step to increase or decrease the amount of sweetener to a range as recited by applicant.

It would have been obvious to one of ordinary skill in the art to modify Howard et al with Denhartog et al by incorporating a high intensity sweetener in the acid stabilized product not only as a sweetener to improve flavor, but also to provide sugar-free food choices for consumers.

Applicant's arguments filed March 23, 2006 have been fully considered but they are not persuasive.

Applicant agues that Howard et al teaches away from using food grade acids.

Howard clearly teaches food acceptable acids including phosphoric acid, fumaric acid, malic acid, lactic acid, citric acid, tartaric acid, acetic acid and propionic acid as is claimed (col 8 lines 30-34).

Applicant does not exclude additional components of Howard et al.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie Wong whose telephone number is 571-272-1411. The examiner can normally be reached on Tuesday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Leslie Wong
Primary Examiner
Art Unit 1761

LAW
March 2, 2007